



September 30, 2008

The Honorable Phil Isenberg & Members of the Delta Vision Task Force
650 Capitol Mall, 5th Floor
Sacramento, CA 95814

Subject: Comments on Delta Vision Fourth Draft Strategic Plan

Dear Chairman Isenberg and Members of the Delta Vision Task Force:

The Environmental Defense Fund appreciates the continuing opportunity to comment on draft versions of the Delta Vision Strategic Plan. The draft includes a number of clear, compelling and sometimes dramatic statements and proposals which may well encourage implementation of its recommendations once the Delta Vision Task Force has completed the final document.

We offer concise yet important suggestions below that relate chiefly to governance, finance, water supply and water system operating criteria. We will focus on the most important aspects of the report that should be improved or clarified, including a couple of key places where the fourth draft backed away from key improvements recommended in the third draft.

Recommendation #1

The Delta Vision strategic plan should include a set of tables or appendices that summarizes its specific recommendations for action by elected officials and governmental agencies.

We appreciate that the draft plan provides unambiguous recommendations to the California legislature and a myriad of agencies, such as “The California Legislature should create a California Delta Ecosystem and Water (CDEW) Council”. A list of the recommendations for each institution in tabular form would provide a useful checklist for reviewing the extent to which the plan is followed in the years and decades ahead.

Recommendation #2

The Delta Vision strategic plan should recommend a separation of the California Department of Water Resources, as it exists today, into two agencies – one that provides planning, oversight and local assistance throughout the State, and a separate utility that operates the State Water Project. (If the Delta Vision Task Force does not feel comfortable making this recommendation definitively, it could do so tentatively, contingent on necessary refinement of details.)

The third draft of the Strategic Plan proposed a bifurcation of the California Department of Water Resources into a project agency (California Water Utility) and an agency with broad oversight over all the water uses within California. We do believe that there is an inherent conflict of interest within DWR as it exists today that too frequently inhibits its ability to

provide balanced statewide water policy guidance and at times polarizes stakeholders. We do not understand why the 4th draft omitted this recommendation. There appeared to be strong support for bifurcation by stakeholder panelists at the Delta Vision Task Force meeting on September 18. Even DWR Director Lester Snow did not reject the idea but said it needed to be refined. We ask that the recommendation to bifurcate DWR be re-inserted either definitely or conditionally.

Recommendation #3

The Delta Vision strategic plan should further refine anticipated new funding sources.

We understand that the Delta Vision Task Force has abandoned the phrase “beneficiary pays”, though language throughout the document seems to indicate that the concept is still supported. We respectfully ask the Delta Vision Task Force to consider EDF’s finance recommendations (June 2008) as it refines finance principles for the Delta Vision.

We agree with DWR Director Snow’s statement before the Delta Vision Task Force on September 18 that the finance plan is as important as the governance plan. We further agree with the statement on page 65 that “there should be a per-acre-foot fee levied on water diversions within the Delta watershed, and a separate fee on any water conveyed through or around the Delta.” The fourth draft provides no suggestion, however, on what amount of funding should be necessary. Does the Delta Vision Task Force envision the volumetric fee to be \$5 or \$50? Should urban and agricultural users pay different amounts?

Environmental Defense Fund believes that collecting substantial fees is clearly warranted for a number of projects that provide public benefit, but that local funds should pay for projects with local benefits. The fourth draft provides too little detail on the differences in how State and local funds should be applied. See examples below.

Recommendation #4

Clarify the Strategic Plan recommendation that a restoration plan should not rely on purchasing water for the environment.

In the fourth draft clearly states (page 66) “No public payment for water required for ecosystem revitalization is anticipated in this finance plan; the legal and fiscal arguments against such inclusion are persuasive.” Environmental Defense Fund supports this view.

We are puzzled, therefore by the text (page 35) stating “an endowment fund – paid for by water users – that would be used to purchase additional water supplies, or “buy-down” demands in particular areas to augment ecosystem flow objectives”. Fundamentally we believe that diversions of water from rivers, streams, groundwater basins and the Delta by water agencies should only be allowed if they do not excessively harm public and environmental values. It should not be necessary and is certainly not efficient to allow excessive diversions and then to buy the water supply back to reduce the impact. We should require that water agencies divert only those flows that do not cause unreasonable environmental harm.

We ask that the 4th draft eliminate the text on page 35 as it is inconsistent with the very clear directive on page 66.

Recommendation #5

The Delta Vision strategic plan should further refine what should be financed with State-collected funds and what should be financed with local funds.

The fourth draft makes broad, somewhat helpful, statements pertaining to how projects ought to be financed. Many of these statements will be interpreted in difference ways, however, and disagreements about what the Delta Vision Task Force actually recommended will ensue. See examples below.

Levees

The fourth draft says (page 42) that State funds should be allocated only to those levees that protect "State interests". The Strategic Plan should define what these State interests are. Otherwise, the statement has little meaning.

Storage

The draft also states that the public should pay for new storage only if there is "public benefit". We certainly agree that statewide public funds should not pay for storage projects that benefit only certain interests or communities. But we are also skeptical that new storage projects would indeed provide public benefit. For example, building Sites Reservoir has been proposed in part to provide additional flows for the benefit of the Delta ecosystem. These extent to which these flow needs exist, of course, is due to other existing projects that exercise diversions with environmentally unsustainable timing or volumes.

Applying public funds to the construct Sites or other reservoirs would therefore be buying water for the ecosystem – which the draft Strategic Plan clearly rejects. A better approach would be to allow only sustainable diversions from other projects and to encourage the owners of those other projects to pursue investment in storage if that investment indeed appears to be cost-effective from their point of view.

Conservation

Environmental Defense Fund also believes that statewide funds should, in general, not be redirected back to communities to fund conservation programs. We believe local communities should pay for their own conservation and will make more cost-effective use of the necessary funds if they do so. Other reasons, perhaps obvious, are that people should pay for water through their own water bills as a matter of fairness and that routing funds through Sacramento tends to have a "friction" loss.

This principle does not change if the conservation is mandated by law. Why should we pay people to obey the law?

While communities should pay for their own conservation programs, the State does have a role in helping utilities learn about how to do these programs. So some level of State funding is appropriate to pay for education but not for implementation.

Recommendation #6

The Strategic Plan should recommend that the legislature consider legislation to facilitate transfers between willing sellers and buyers that do not adversely affect the environment or communities.

The Delta Vision stakeholder water supply committee broadly acknowledged that barriers to water transfers often prevent market-based transactions that would otherwise take place. While we appreciate the recommendation (page 35) that DWR and SWRCB work together to improve procedures for transfers, we believe legislation is necessary to remove legal barriers that prevent some transfers from taking place.

While we often support water transfers and believe they may be the most effective tool for encouraging water use efficiency both on farms and in cities, we acknowledge that not all transfers should be allowed. We appreciate the draft's cautionary language regarding public trust and reasonable use, as well as the needs to protect communities of origin from excessive diversion and to prevent the permanent conversion of farmland. In addition, we believe transfer activity must not prevent any California resident from receiving a reasonable supply of high quality water for indoor household use at a fair price.

Recommendation #7

The Strategic Plan's recommendation of legislation to encourage groundwater banking should address existing disincentives to groundwater development.

We appreciate the comments throughout the report that groundwater plays an important role in water management and that this role could be expanded. The proposal for legislation (page 35) does not acknowledge the need to encourage cooperation and/or overcome opposition in some areas to develop projects that are in the public interest. Also, we believe that the recommendation (page 34) to collect groundwater use data should be included in legislation, as it is our understanding that the State does not currently have such authority.

Recommendation #8

The Strategic Plan should explain how flexible criteria for managing Delta diversions should be implemented.

We appreciate the Strategic Plan's emphasis that flexible criteria should be used to minimize the harm caused by diversions from the Delta. This is a major concern that we addressed in significant detail in our submission to the Delta Vision Task Force titled "Increasing the Flexibility of Environmental Water" (April 2008). While we understand that the Delta Vision Task Force may be reluctant to delve deeply into how flexible operating criteria should be employed, some degree of direction or specificity is clearly warranted. The Delta Vision Task

Force should address mechanisms through which the CDEW Council should work with existing agencies to reasonably balance diversions and ecosystem protection, including how flexible criteria can be applied in real time.

Thank you for the opportunity to provide comment. We look forward to further dialog with the Delta Vision Task Force.

Sincerely,

A handwritten signature in blue ink, appearing to read "Spreck Rosekrans". The signature is fluid and cursive, with the first name "Spreck" and last name "Rosekrans" clearly distinguishable.

Spreck Rosekrans
Senior Analyst